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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194-3657-02]

RIN 0648-XE005

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; Swordfish General Commercial permit retention limit adjustment for Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

SUMMARY: NMFS is adjusting the Swordfish (SWO) General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the remainder of 2015, unless otherwise noticed. The SWO General Commercial permit retention limit in each of these three regions is increased to six SWO per vessel per trip. The SWO General Commercial permit retention limit in the Florida SWO Management Area will remain unchanged at zero SWO per vessel per trip. This adjustment applies to SWO General Commercial permitted vessels and HMS Charter/Headboat permitted vessels when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective July 30, 2015 through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727-824-5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic SWO by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic SWO quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) into two equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking SWO recreationally, and a reserve category, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2015 adjusted North Atlantic SWO quota is 3,359.4 mt dw (see FR 80 25609, May 5, 2015). From the adjusted quota, 50 mt dw was allocated to the reserve category for inseason adjustments and research, and 300 mt dw was allocated to the incidental category, which includes recreational landings and landings by incidental SWO permit holders, per § 635.27(c)(1)(i). This resulted in an allocation of 3,009.4 mt dw for the directed fishery, which is split equally (1,504.7 mt dw) between two seasons in 2015 (January through June, and July through December).

Adjustment of SWO General Commercial Permit Vessel Retention Limits

The 2015 North Atlantic SWO fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas, began January 1, 2015. Landings attributable to the SWO General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the SWO General Commercial permit are: 1) Northwest Atlantic region – three SWO per vessel per trip; 2) Gulf of Mexico region– three SWO per vessel per trip; 3) U.S. Caribbean region – 2 SWO per vessel per trip; and, 4) Florida SWO Management Area – zero SWO per vessel per trip. The default retention limits apply to SWO General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels when fishing on non-for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more SWO than is specified for the region in which the vessel is located. The retention limits were not adjusted in 2014.

NMFS has received requests to increase the retention limits in the Northwest Atlantic region and in the Florida SWO Management Area. Under § 635.24(b)(4)(iii), NMFS may increase or decrease the SWO General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six SWO per vessel per trip. Any adjustments to retention limits must be based upon consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: The usefulness of information obtained from biological sampling and monitoring of the North Atlantic SWO stock; the estimated ability of vessels participating in the fishery to land the amount of SWO quota available before the end of the fishing year; the estimated amounts by which quotas for other categories of the fishery might be

exceeded; effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; variations in seasonal distribution, abundance, or migration patterns of SWO; effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall SWO quota; and, review of dealer reports, landing trends, and the availability of SWO on the fishing grounds.

NMFS has considered these criteria, as discussed below, and their applicability to the SWO General Commercial permit retention limit in all regions for the remainder of 2015. Last year, with application of the default SWO General Commercial permit retention limits, total annual directed SWO fishery landings were approximately 1,303 mt dw (39 percent of the 3,303-mt dw total annual adjusted directed fishery quota). This year, through June 30, 2015, directed SWO landings are 481.6 mt dw (36.5 percent of the 1,505 mt dw Jan. to June semi-annual adjusted directed subquota; or 16 percent of the 3,010 mt dw total annual adjusted directed quota).

Given that SWO directed landings fell well below the available 2014 quota, and that 2015 landings continue to be below the available 2015 directed SWO quota, and considering the regulatory criteria, NMFS has determined that the SWO General Commercial permit vessel retention limit in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a SWO General Commercial permit or HMS Charter/Headboat permit (when on a non-for-hire trip) should be increased from the default levels discussed above.

A principal consideration is the objective of providing opportunities to harvest the full North Atlantic directed SWO quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation,

particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” At the same time, it is also important for NMFS to continue to provide protection to important SWO juvenile areas and migratory corridors.

After considering all of the relevant criteria, NMFS has determined that this year, increases from the default limits are warranted. With respect to the regulatory criteria, NMFS has examined dealer reports and landing trends, and determined that the information obtained from biological sampling and monitoring of the North Atlantic SWO stock is useful. Recently implemented electronic dealer reporting provides accurate and timely monitoring of landings. This information indicates that sufficient directed SWO quota is available that would warrant an increase in the SWO General Commercial permit retention limit. Regarding the regulatory criterion that NMFS consider “the estimated ability of vessels participating in the fishery to land the amount of SWO quota available before the end of the fishing year,” the directed SWO quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded in 2015. Based upon recent landings rates from dealer reports, an increase in the vessel retention limit for SWO General Commercial permit holders is not likely to cause quotas for other categories of the fishery to be exceeded. Similarly, regarding the criterion that NMFS consider the estimated amounts by which quotas for other categories of the fishery might be exceeded, NMFS expects there to be sufficient SWO quota for the remainder of the year, and thus increased catch rates in one region are not expected to preclude vessels in another region from having a reasonable opportunity to harvest a portion of the overall SWO quota. Landings by vessels issued this permit (and Charter/Headboat permitted vessels on a non-for-hire trip) are counted against the adjusted directed SWO quota. As indicated above, this quota has

not been exceeded for several years and, based upon current landing trends, is not likely to be exceeded in 2015. Similarly, NMFS expects that there will be sufficient SWO quota for the remainder of the year, thus increased catch rates in one region are not expected to preclude vessels in another region from having a reasonable opportunity to harvest a portion of the overall SWO quota.

With regard to SWO abundance, the 2014 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic SWO stock is not overfished ($B_{2011}/B_{msy} = 1.14$), and overfishing is not occurring ($F_{2011}/F_{msy} = 0.82$). Increasing the retention limit for this U.S. handgear fishery is not expected to affect the SWO stock status determination because any additional landings would be in compliance with the ICCAT recommended U.S. North Atlantic SWO quota allocation.

Mature SWO are anticipated to migrate to the fishing grounds off the northeast U.S. coast during the summer and fall months. Based upon landings over the last several years, it is highly unlikely that the June through December directed SWO subquota will be filled with the current default retention limits of three SWO per vessel per trip (Northwest Atlantic and Gulf of Mexico), and two SWO per vessel per trip (U.S. Caribbean). For the entire 2014 fishing year, 39 percent of the total adjusted directed SWO quota was filled.

Increasing the SWO General Commercial permit retention limit to six fish per vessel per trip will increase the likelihood that directed SWO landings will approach, but not exceed, the annual SWO quota, as well as increase the opportunity for catching SWO during the June through December directed subquota period. Increasing opportunity within this subquota period is also important because of the migratory nature and seasonal distribution of SWO, one of the regulatory criteria to be considered when changing the retention limit inseason (variations in

seasonal distribution, abundance, or migration patterns of SWO). In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for SWO may be constrained by the short amount of time the SWO are present as they migrate. Dealer reports for Swordfish General Commercial permitted vessels indicate swordfish are available from June through December in both the Northwest Atlantic and Gulf of Mexico regions and are likely to be available in the U.S. Caribbean region during December and January.

Based upon these considerations, NMFS has determined that a six-fish per vessel per trip SWO General Commercial permit retention limit is warranted in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions through December 31, 2015, for SWO General Commercial permitted vessels and HMS Charter/Headboat permitted vessels when on a non-for-hire trip. It would provide a reasonable opportunity to harvest the U.S. quota of SWO without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the SWO fishery; allow for the collection of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. Therefore, NMFS increases the SWO General Commercial permit retention limit from the default limit to six SWO per vessel per trip in these three regions, effective from July 30, 2015 through December 31, 2015. The regional SWO retention limits will automatically revert back to the default levels on January 1, 2016.

As indicated above, NMFS has also received requests since publication of the final rule implementing Amendment 8 to the 2006 Consolidated HMS FMP (which established the SWO General Commercial permit) to increase the retention limit of SWO in the Florida SWO Management Area from the default of zero. NMFS has determined that the retention limit will remain at zero SWO per vessel per trip in the Florida SWO Management Area in 2015. As

described in Amendment 8 to the 2006 Consolidated HMS FMP, the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile SWO habitat, and is essentially a narrow migratory corridor containing high concentrations of SWO located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized SWO, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida SWO Management Area and other regional retention limits.

These adjustments are consistent with the 2006 Consolidated HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the SWO fishery closely through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no SWO were purchased) on a weekly basis.

Depending on the level of fishing effort and catch rates of SWO, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access <http://www.nmfs.noaa.gov/sfa/hms/species/swordfish/landings/index.html> for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in SWO landings, the availability of SWO on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available SWO quota, stock abundance, fishery performance in recent years, and the availability of SWO on the fishing grounds, among other considerations, adjustment to the SWO General Commercial permit retention limits from the default levels is warranted. Analysis of available data shows that adjustment to the SWO daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the “Atlantic HMS Breaking News” website at http://www.nmfs.noaa.gov/sfa/hms/news/breaking_news.html. Delays in temporarily increasing these retention limits would adversely affect those SWO General Commercial permit holders and HMS Charter/Headboat permit holders that would otherwise have an opportunity to harvest more than the default retention limits of three SWO per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two SWO per vessel per trip in the U.S. Caribbean region. Further, any delay could exacerbate the problem of low SWO landings and subsequent quota rollovers. Limited opportunities to harvest the directed SWO quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the

retention limits needs to be effective as soon as possible to allow the impacted sectors to benefit from the adjustment during the relevant time period, which would have largely passed by for some fishermen if the action is delayed for notice, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 23, 2015

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